

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Solomon Halioua MD
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-24-1360-5671

Applicant's File No. n/a

Insurer's Claim File No. 32-49M7-18D

NAIC No. 25178

ARBITRATION AWARD

I, Anne Malone, the undersigned arbitrator, designated by the American Arbitration Association pursuant to the Rules for New York State No-Fault Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties make the following **AWARD**:

Injured Person(s) hereinafter referred to as: EIP

1. Hearing(s) held on 02/03/2025
Declared closed by the arbitrator on 02/03/2025

Usman Nawaz, Esq. from Law Offices of Hillary Blumenthal LLC (Hoboken)
participated virtually for the Applicant

Scott Schwaber, Esq. from Freiberg, Peck and Kang, LLP participated virtually for the
Respondent

2. The amount claimed in the Arbitration Request, **\$5,079.11**, was NOT AMENDED at the oral hearing.
Stipulations WERE NOT made by the parties regarding the issues to be determined.
3. Summary of Issues in Dispute

The 51 year old EIP reported involvement in a motor vehicle accident on May 9, 2023; claimed related injury and underwent a Transforaminal discectomy provided by the applicant on October 18, 2023.

The applicant submitted a claim for these medical services, partial payment of which was timely made by the respondent based upon its determination of the correct reimbursable amount pursuant to the New York Workers' Compensation Medical Fee Schedule.

The issue to be determined at the hearing is whether the respondent established its fee schedule defense.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

The applicant billed \$10,034.77 for the surgery at issue for which the respondent made payment with interest of \$5,081.21, leaving a balance of \$5,079.11.

To prevail in its fee schedule defense, the respondent must demonstrate by competent evidentiary proof that the applicant's claims are in excess of the appropriate fee schedule. If the respondent fails to do so, its defense of noncompliance with the New York Workers' Compensation Medical Fee Schedule cannot be sustained. See Continental Medical, P.C. v Travelers Indemnity Co., 11 Misc. 3d 145A (App. Term 1st Dept. 2006.)

An insurer fails to raise a triable issue of fact with respect to a defense that the fees charged were not in conformity with the Workers' Compensation fee schedule when it does not specify the actual reimbursement rates which formed the basis for its determination that the claimant billed in excess of the maximum amount permitted. See St. Vincent Medical Services, P.C. v. GEICO Ins. Co., 29 Misc.3d 141(A), 907 N.Y.S.2d 441 (App. Term 2d, Dec. 8, 2010.)

A fee schedule defense does not always require expert proof. There are two fee schedule scenarios. The first involves the basic application of the fee codes and simple arithmetic. The second scenario involves interpretation of the codes and often requires testimony and expertise beyond that of a lay individual. I find that the fee schedule issue presented in this case is analogous to the latter scenario and requires an expert's opinion.

Late denial

The denial of this claim was late on its face. However effective April 1, 2013, 11 NYCRR 65-3.8(g)(1) has been amended so that the application of the New York State Worker's Compensation fee schedule is no longer a precludable defense and no payment is due on those claims in excess of the fee schedule. Per 11 NYCRR 65-3.8(g), where the services were rendered after April 1, 2013, a defense of excessive fees is not subject to preclusion Surgicare Surgical Associates v. National Interstate Ins. Co., Misc.3d, N.Y.S.3d, 2015 N.Y. Slip

Op. 25338 (App. Term 1st Dept. Oct. 8, 2015), 46 Misc.3d 736, 997 N.Y.S.2d 296 aff'g (Civ. Ct. Bronx Co. 2014) (New Jersey fee schedule.) The insurer is entitled to reduce the bills to the proper fee schedule amount.

The respondent supported its fee schedule defense, with the affidavit of Lori Ercolini, R.N., CPC, medical professional and certified professional coder who submitted a comprehensive review and analysis and determined, based on the applicable New York fee schedule that the correct reimbursable amount for the services at issue is \$4,955.66.

Ms. Ercolini discussed the fee schedule issue of whether the New York or New Jersey fee schedule governs this case. The EIP is a New York resident and the medical services at issue were provided in New Jersey.

New York State Department of Financial Services Thirty Third Amendment to 11 NYCRR 68 (Insurance Regulation 83) which applies to health services performed outside New York State was effective January 23, 2018. Pursuant to this amendment an analysis of both the New York and New Jersey fee schedules is necessary to determine the appropriate fee schedule. The amendment determined that the correct reimbursable amount is the lesser allowance of the New York and New Jersey fee schedules for the medical services provided.

Based on this analysis, the fee schedule that will be used in accordance with the above regulations will be the New York State Workers' Compensation Fee Schedule.

Ms. Ercolini discussed in detail the provisions of the New York fee schedule and determined that the correct payment is \$0 for CPT code 62287 which is considered included in CPT codes 22526 and 22527. The result of her calculations is a total reimbursable amount of \$4,955.66.

In response, the applicant submitted a letter from Dr. Halioua, the treating surgeon, requesting an appeal of the denial of the claim at issue. He specifically addressed procedure code 62287, which was not paid by the respondent. Dr. Halioua provided documentation and stated that all the codes listed in the bill for the services at issue were payable. He described in detail the decompression procedure which was billed under CPT code 62287 and the reasons that it was necessary.

However, Dr. Halioua is not a certified fee coder and his arguments did not take into account the provisions of the New York Workers' Compensation Medical Fee Schedule which governs the correct payment for the surgery at issue.

Based on the foregoing, I find that the affidavit of Lori Ercolini, R.N., CPC is more persuasive in this matter and that the respondent has established its fee schedule defense.

Accordingly, the claim is dismissed with prejudice.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

5. Optional imposition of administrative costs on Applicant.
Applicable for arbitration requests filed on and after March 1, 2002.

I do NOT impose the administrative costs of arbitration to the applicant, in the amount established for the current calendar year by the Designated Organization.

6. I find as follows with regard to the policy issues before me:

- ☐ The policy was not in force on the date of the accident
- ☐ The applicant was excluded under policy conditions or exclusions
- ☐ The applicant violated policy conditions, resulting in exclusion from coverage
- ☐ The applicant was not an "eligible injured person"
- ☐ The conditions for MVAIC eligibility were not met
- ☐ The injured person was not a "qualified person" (under the MVAIC)
- ☐ The applicant's injuries didn't arise out of the "use or operation" of a motor vehicle
- ☐ The respondent is not subject to the jurisdiction of the New York No-Fault arbitration forum

Accordingly, the claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of CT

SS :

County of Fairfield

I, Anne Malone, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

02/04/2025
(Dated)

Anne Malone

IMPORTANT NOTICE

This award is payable within 30 calendar days of the date of transmittal of award to parties.

This award is final and binding unless modified or vacated by a master arbitrator. Insurance Department Regulation No. 68 (11 NYCRR 65-4.10) contains time limits and grounds upon which this award may be appealed to a master arbitrator. An appeal to a master arbitrator must be made within 21 days after the mailing of this award. All insurers have copies of the regulation. Applicants may obtain a copy from the Insurance Department.

ELECTRONIC SIGNATURE

Document Name: Final Award Form

Unique Modria Document ID:

ddd9547d278f6f424fbdbfde9bf133b1

Electronically Signed

Your name: Anne Malone
Signed on: 02/04/2025